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INTERNAL REVENUE SERVICE

Index No.: 408.03-00

OP:E:EP:T:1

SEP 8 1999

Legend:

Individual A =  
Individual B =  
Individual C =  
State Y =  
Bank X =  
Trust X =

Dear :

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated September 15, 1998, as supplemented by correspondence dated July 26, 1999, regarding the federal income tax consequences of a proposed rollover of a distribution from a decedent's estate to an individual retirement account ("IRA").

The following facts and representations have been submitted on your behalf:

Individual A died testate on April 27, 1997 at the age of 65. At the time of his death he was married to Individual B. Individual B was born on July 9, 1950.

The decedent's will created a testamentary trust, Trust X. Pursuant to the provisions of Trust X, the trustee established a sub-trust for the benefit of Individual C, Individual A's son ("Individual C's sub-trust"), and a sub-trust for the benefit of Individual B ("Individual B's sub-trust"). Individual B had the power to withdraw all of the assets of Individual B's sub-trust at any time. In the absence of exhaustion of the funds, Individual B's sub-trust provided income to her and then, upon her death, distribution of the remainder of the assets to several successor beneficiaries.

Individual B is the trustee of Individual C's sub-trust. Individual B and Bank X are co-trustees of Individual B's sub-trust. Individual B is also the executrix of Individual A's estate.

At the time of his death, Individual A was receiving monthly distributions from his IRA account, which had begun in September of 1996. The decedent named Trust X as his IRA account beneficiary.

According to representations made by the taxpayer, under the laws of State Y and the provisions of Individual A's will and respective trust instruments, Individual B as executor of the estate has discretion on how to fund the two sub-trusts. Individual B funded Individual C's sub-trust with fifty thousand dollars from cash proceeds received from a life insurance policy. Remaining estate assets, including the IRA account, were assigned to Individual B's sub-trust.

Individual B proposes to have her sub-trust distribute the IRA account proceeds to her and to roll over the proceeds into her own IRA within 60 days of the distribution.

Individual B requests the following ruling:

The distribution and subsequent rollover of the IRA proceeds to an IRA account in Individual B's own name will be treated as a tax-free spousal rollover for purposes of section 408(d)(3) of the Code because of the ability on the part of Individual B to effectively terminate the sub-trust which holds the IRA account by the distribution of all of the assets therein to her name, at any time and for any reason.

Section 408(d)(1) of the Code provides that, except as otherwise provided, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3)(A)(i) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount

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received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he or she receives the payment or distribution.

Section 408(d)(3)(C)(i) of the Code provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

Generally, if a decedent's IRA proceeds pass through a third party, e.g., a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from a third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over the IRA proceeds into his or her own IRA.

However, in a situation where the surviving spouse has the power to cause the IRA assets of the trust to revert to himself or herself, then for purposes of section 408(d)(3) of the Code, the Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

Individual B, the surviving spouse of Individual A, has the power as executrix under State Y law and the terms of Trust X to allocate the IRA assets to her sub-trust. Individual B is also sole beneficiary of her sub-trust and is empowered by its terms to withdraw the assets at any time. Individual B intends to withdraw Individual A's IRA assets and roll the assets over into an IRA maintained in Individual B's own name within 60 days of distribution of Individual A's IRA assets to Trust X.

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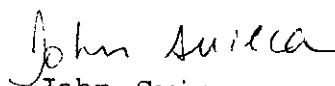
Based on the foregoing, we conclude as follows:

The distribution and subsequent rollover of Individual A's IRA proceeds to an IRA account in Individual B's own name will be treated as a tax-free spousal rollover for purposes of section 408(d)(3) of the Code because of the ability on the part of Individual B to effectively terminate the sub-trust which holds the IRA account by the distribution of all of the assets therein to her name, at any time and for any reason.

This ruling is based on the assumptions that (1) the laws of State A provide Individual B, as executrix, with the power, as set forth in the taxpayer's representations, to fund the sub-trusts as set forth above, and (2) Individual A's IRA, and the IRA to be established by Individual B, meet the requirements of section 408 of the Code at all times relevant to the transaction described herein.

A copy of this letter is being sent to your authorized representative in accordance with instructions in the power of attorney on file with this office.

Sincerely,



John Swieca  
Chief, Employee Plans  
Technical Branch 1

Enclosures:

Deleted copy of this letter  
Notice of Intention to Disclose,  
Notice 437